No. 2044

United States

Circuit Court of Appeals

For the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant.

vs.

TSUJI SUEKICHI,

Appellee.

In the Matter of the Application of TSUJI SUEKICHI for a Writ of Habeas Corpus.

Brief of Appellee Tsuji Suekichi

Upon Appeal from the United States District Court for the Territory of Hawaii

PARADISE OF THE PACIFIC PRINT, HONOLULU

United States
Circuit Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA, Appellant.	}	Appeal from the District Court of the United States for the Territory of Hawaii.
vs.		
TSUJI SUEKICHI, Appellee.		

Brief of Appellee Tsuji Suekichi

STATEMENT OF THE CASE.

This is an appeal from a judgment entered in the District Court of the United States in and for the District and Territory of Hawaii on July 31st, 1911, in the matter of the Application of Tsuji Suekichi for a writ of Habeas Corpus, discharging the petitioner from custody subject to the taking of an appeal.

The undisputed facts of the case are as follows:

The petitioner, Tsuji Suekichi, is a subject of the Emperor of Japan; that on or about the 27th day of July, 1906, petitioner arrived in Honolulu, Oahu, aboard the S. S. "Manchuria," he having embarked on said steamship in Japan; and thereupon petitioner was duly admitted to the Territory of Hawaii, and since the last mentioned date has had his domicil in Honolulu; that prior to the arrival of petitioner in the Territory of Hawaii, he had been lawfully married according to the laws of the

Empire of Japan to Masa Tsuji, and that said Masa Tsuji arrived in Honolulu on or about the 28th day of August, 1906, aboard the S. S. "America Maru"; and that at all times since last mentioned date, the said Masa Tsuji has resided and had her domicil in Honolulu; that on or about the 26th day of September, 1910, petitioner departed from the port of Honolulu aboard the S. S. "China", bound for the Empire of Japan to which country petitioner desired to go for a short visit, and upon leaving said port of Honolulu and at all times thereafter, petitioner intended to return to said Honolulu and to continue to reside in said Honolulu; that said petitioner, during his intended temporary absence as aforesaid, left his said wife in Honolulu; that petitioner returned to the port of Honolulu on or about the 17th day of June, 1911, aboard the S. S. "Korea"; that upon the arrival of the petitioner at the port of Honolulu, on the date last aforesaid, Raymond C. Brown, Esq., United States Immigration Inspector at said port of Honolulu refused landing to petitioner under the claim that petitioner is an alien immigrant and as such, a person belonging to an excluded class under the Immigration Laws of the United States.

After a hearing before the Honorable Charles F. Clemons, Judge of said District Court, a decision and judgment were duly entered, from which judgment this appeal is taken.

ARGUMENT.

The Assignment of Errors shows that the questions therein presented may be divided into two classes;

First:—Letting it be granted that the facts alleged in the petition and in the return are true, have the Federal Courts jurisdiction to grant relief in Habeas Corpus proceedings, especially in view of the fact that a hearing of the cause was had before the Board of Special Inquiry and no appeal has been taken from the findings of said Board?

Second:—Does the admitted fact that the petitioner retained his domicil in the Territory of Hawaii at all times from the date of his arrival in 1906 *to the date of his second arrival,*

place him in the category of a non-immigrant alien, and as such, not amenable to the provisions of the Immigration Act of February 20th, 1907, 34 *Stat.* 898, *as amended by the Act of March 26th,* 1910; *and as such non-immigrant alien had he the right to land in the United States, even though he may come within the class of criminals as defined in Section 2 of this Act?*

FIRST, AS TO JURISDICTION.

We submit that an examination of the authorities demonstrates clearly the proposition that:

When the facts alleged, both by the petitioner and by the respondent, are admitted to be true, the Court will, on Habeas Corpus, determine the questions, (a) whether the immigration authorties in view of the admitted facts, have power to detain the applicant, and order him deported, and (b) whether the facts admitted require, as a matter of law, that the applicant be allowed to land.

It seems to us that this question is decided once and for all in the case of *Nichimura Ekiu* vs. *United States,* 142 U. S., 651, 35 L. Ed., 1146; where the Court say:

"An alien immigrant, prevented from landing by such (Im-"migration) officers claiming to do so under an Act of Congress, "and thereby restrained of his liberty. is doubtless, entitled to "a Writ of Habeas Corpus to ascertain whether the restraint is "lawful". This case has been cited a great number of times and has never been reversed or modified.

In *Ex Parte Petterson,* 166 Fed. 536, Petterson, who had not acquired a domicil in the United States, was ordered deported by the Immigration authorities on the ground that she was a prostitute. A Writ of Habeas Corpus issued which was ultimately discharged, but the Court held that when the evidence before the Immigration Officer is uncontradicted, and establishes as a matter of law, that the case is not within the Statute, the matter may be considered by the Court on Habeas Corpus.

In *United States* vs. *Nakashima,* 160 Fed. 843, a case origi-

nating in the District Court of the United States for the District and Territory of Hawaii and brought to this Court on Appeal, Nakashima, who had a domicil in San Jose, Cal., visited Japan, and on his return was ordered deported on the ground that he was in a class of excluded persons, by reason of the fact that he was suffering with trachoma; he claimed the right to land by reason of his having a domicil in the United States and he was enlarged on Habeas Corpus, the judgment of the District Court being affirmed on appeal.

Ex Parte Saraceno, 182 Fed. 955.
Davis vs. *Manolis,* 179 Fed. 818.
Botis vs. *Davies,* 173 Fed. 996.
Ex Parte, Koerner, 176 Fed. 478.
United States vs. *Sibray,* 178 Fed. 144.
In re Chop Tin, 2 U. S. D. C. Reports (Hawaii) 154.

Second:—Does the admitted fact that petitioner retained his domicil in the Territory of Hawaii at all times from the date of his arrival in 1906 *to the date of his second arrival, place him in the category of a non-immigrant alien, and as such, not amenable to the provisions of the immigration act of February* 20*th,* 1907, 34 *Stat.* 898, *as amended by Act of March* 26*th,* 1910, *and as such non-immigrant alien had he the right to land in the United States, even though he may come within the class of criminals as defined in Section* 2 *of this act?*

This question has been decided in several cases:

Rogers vs. *United States,* 152 Fed. 346.
In re Blchsbaum, 141 Fed. 221.
United States vs. *Aultman,* 143 Fed. 922.
In re Panzara, 51 Fed. 275.
In re Martorelli, 63 Fed 437.
In re Maiola, 67 Fed. 114.
United States vs. *Sandrey,* 48 Fed. 550.
In re Ota, 96 *Fed.* 487.
United States vs. *Burke,* 99 Fed. 895.
In re Di Simone, 108 Fed. 942.
Mofitt vs. *United States,* 128 Fed. 375.
United States vs. *Nakashima,* 160 Fed. 843.

We submit that the Nakashima case is conclusive and the United States Attorney has failed to show any valid reason why this Court should reverse or modify that case. It was contended below by the United States that the Nakashima case should be reversed since the law as it then existed, to-wit, the Act of March 3rd, 1903, 32. Stat. 1213, has been amended by the Act of February 20th, 1907, 34 Stat. 898, and again amended the Act of March 26th, 1910, 36 Stat. 263. While the tendency of recent legislation has been to make the laws relating to the immigration of undesirable aliens more strict, yet it is to be noticed that in none of the amendments have the rights of non-immigrant aliens been restricted or modified. The Congress of the United States when enacting the laws of 1907 and 1910 is presumed to be famliar with the cases above cited and the fact that Congress failed to change the law in this respect, as interpreted by the foregoing decisions clearly shows that there was no intention to affect the right of those aliens who had acquired a domicil in the United States.

In *United States* vs. *Aultman,* 143 Fed. 928, the Court say:

"Since that time the law has been amended, especially by the "Act of March 3rd, 1903; and it is a familiar principle that "when a certain construction has been given to a statute, es- "pecially when its general language has been qualified, and "subsequent legislation has not undertaken to change the "language so as to meet with the judicial definition, added per- "suasiveness is given to the construction of the law which the "Courts have put upon it. That is to say, that if Congress "intended to give a wider application to the law than the courts "have given to it, it is reasonable to assume that it would have "so legislated when it came to amend the law after the decisions "were made public."

It is clear that the Government of the United States considers the non-immigrant alien in a different class from that of alien immigrants for in its staticial rules of the Immigration Regulations it is provided that:

Rule VIII. Alien residents returning from a temporary

"trip abroad, and aliens residing abroad, coming to the United "States for a temporary trip, shall be classed as non-immigrant "aliens (except as provided by Rule IX.) Inspection officers "engaged in revising manifests are directed to see that all non- "immigrant aliens are distinctly indicated as such on manifests. "Non-immigrant aliens admitted should be reported on statis- "tical Forms 619, 620, and 651-656."

Luhrs vs. *Eimer,* 80 N. Y. 171.
Brannigan vs. *Union Co.,* 93 Fed. 164.
Gele vs. *Lemberger,* 163 Ill. 338.
Milliken vs. *Barrow,* 55 Fed. 148.

It is respectfully submitted that the judgment of the District Court should be affirmed.

TSUJI SUEKICHI,

By his Attorney,

J. LIGHTFOOT.

Dated, Honolulu, March 7th, 1912.